



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
C-14J

September 27, 2013

VIA EMAIL and U.S. MAIL

Kim K. Burke
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957

Re: Canton Drop Forge, Inc. Notice of Violation

Dear Mr. Burke:

Thank you for your September 13, 2013 status report letter to the United States Environmental Protection Agency (U.S. EPA) providing information regarding the environmental improvements that Canton Drop Forge, Inc. (CDF) is undertaking at its facility. The purpose of this letter is to respond to your September 13, 2013 letter, and provide you with U.S. EPA's expectations to resolve the violations cited in its January 22, 2013 Notice of Violation (NOV).

As explained in the NOV, and in subsequent letters and discussions, CDF violated and continues to violate the requirements for "Hazardous Waste Management" under Subchapter III of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901–7001; and its implementing regulations. The NOV cites the statutory and regulatory provisions prohibiting a facility from storing or managing used oil in surface impoundments except, *inter alia*, in compliance with a hazardous waste operating permit, or the interim status provisions specifying the necessary design and operating requirements for surface impoundments.¹ Importantly, after discontinuing the use of the surface impoundments, the provisions require the facility to ensure that the surface impoundments meet the specified closure requirements (*i.e.*, Subpart K of 40 C.F.R. Parts 264 and 265), including applicable post-closure and financial-assurance requirements.

¹ The provisions also specifically require a facility to stop a release of used oil, and, if a release does occur, cleanup a release.

U.S. EPA appreciates CDF's current efforts to comply with RCRA by designing and installing the equipment necessary to cease conveying and releasing used oil to – and thus cease managing and storing used oil in – Ponds 1 and 2. U.S. EPA also appreciates CDF's efforts to assess and remediate Ponds 1 and 2, as well as other areas of the facility that may be subject to RCRA.²

Within the next three weeks, U.S. EPA expects to reach an agreement in principle with CDF to resolve this matter. Such an agreement would require CDF to take the necessary measures to cease the conveyance and prevent the release of used oil to Ponds 1 and 2; and submit to the Ohio Environmental Protection Agency (OEPA) a plan meeting the cleanup requirements for the formal closure of Ponds 1 and 2.³

U.S. EPA believes that such an approach will allow CDF to expeditiously remediate Ponds 1 and 2, and also allow CDF to remediate, under OEPA's Voluntary Action Program (VAP), other areas of the facility. If remediation proceeds according to this plan, CDF may seek to work with OEPA to integrate any long-term remedial elements, such as land-use restrictions or groundwater monitoring, with any facility-wide remedial elements (*e.g.*, under the VAP). To the extent that CDF may be unduly concerned about cleanup requirements and the process of formal closure, you may wish contact Mr. Todd Anderson, Office of Legal Services, OEPA, at (614) 644-3037; or CDF may wish to contact Mr. Ed Lim, Division of Materials and Waste Management, OEPA, at (614) 644-2824.

Under the Memorandum of Agreement (MOA) between U.S. EPA and OEPA, facilities subject to an enforcement action for violations of RCRA requirements – including the ongoing violations that are the subject of this matter – are not eligible to participate in the VAP.⁴ The MOA was entered, as part of the area-wide pilot project, to implement in part U.S. EPA's "One Cleanup Program" (OCP). As explained in Section III.A. of the MOA: "[The Agencies] seek to facilitate the productive reuse of industrial and commercial properties." The MOA, however, was not intended to resolve ongoing RCRA violations; particularly those violations in which the facility has not yet joined a binding agreement to ensure that it will cease any ongoing RCRA violations.⁵

² It should be noted that the documents CDF submitted in response to U.S. EPA's April 5, 2013 Request for Information appear to show that CDF was and has been aware for years of the requirement prohibiting the storage and management of used oil in surface impoundments and the requirement to remediate the surface impoundments. *See e.g.*, bates numbers CDF002125, CDF002556, CDF004140-4143, CDF005013-5150, CDF006467-6485, *etc.*

³ Alternatively, CDF may wish to submit a permit application to OEPA to obtain a RCRA operating permit for Ponds 1 and 2, which would include the necessary design and operating requirements applicable to surface impoundments.

⁴ Regardless, the settlement agreement attached to your September 13, 2013 letter provides for stringent oversight by U.S. EPA, provides specific measures and actions that must be taken, and provides for significant stipulated penalties.

⁵ *E.g.*, by continuing to convey and allow the release of used oil to surface impoundments, without a binding agreement to implement all necessary measures to cease and prevent used oil from entering the surface impoundments.

As we stated during our August 20, 2013 meeting, U.S. EPA believes it is in the best interest of all parties to resolve this matter by entering into a consent agreement.⁶ If you have any questions regarding this letter, please contact me at (312) 886-6041; or have CDF contact Mr. Brian Kennedy at (312) 353-4383.

Sincerely,



Eaton R. Weiler
Associate Regional Counsel

cc: Karen Nesbit, OEPA
(karen.nesbit@epa.state.oh.us)

Sue Kroeger, OEPA
(sue.kroeger@epa.state.oh.us)

Mark Navarre, OEPA
(mark.navarre@epa.state.ohio.us)

Todd Anderson, OEPA
(todd.anderson@epa.state.ohio.us)

Ed Lim, OEPA
(ed.lim@epa.state.ohio.us)

⁶ This letter does not confer any right or benefit, procedural or substantive, and U.S. EPA retains its authority to commence, at any time, an enforcement action under federal law. Under U.S. EPA's 'Hazardous Waste Enforcement Response Policy,' which is designed to provide for nationally consistent enforcement, Region 5 is required to such resolve matters by filing a civil action, issuing a unilateral administrative order, and/or filing consent agreement. Settling a matter prior to filing a complaint is the most expeditious way to resolve a matter